



June 13, 2019

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication: WC Docket Nos. 17-287, 11-42, 09-197

Dear Ms. Dortch:

On June 11, 2019, the undersigned of ITTA, along with ITTA members (all of whom participated by telephone) Ann Morrison of Consolidated Communications, Sara Cole of TDS Telecom, Tiffany Smink of CenturyLink, and Michelle Owens of Blackfoot, met with Trent Harkrader, Ryan Palmer, Jodie Griffin, Nicholas Page, and Niki Wasserman of the Wireline Competition Bureau (Bureau) regarding the Universal Service Administrative Company's (USAC) developing Lifeline Representative Accountability Database (RAD). While supporting Commission efforts to address the waste, fraud, and abuse that have plagued the Lifeline program,¹ we raised concerns regarding the potential impacts of implementation of the RAD on the privacy and security of ITTA members' employees' personally identifiable information (PII), expressed that the scope of who may have to register with the RAD and what information they may have to provide is overbroad, and noted procedural infirmities with how implementation may occur.

The ITTA members represented on the call, at a minimum, share the common characteristics of being facilities-based carriers that use company employees to handle Lifeline enrollments, and that do not offer sales incentives to such company employees for these enrollments. As such, we expressed that companies such as these handling Lifeline enrollments in this manner are not the intended targets of the safeguards promoted by the RAD. In directing USAC to establish the RAD, Chairman Pai referred to an FCC Inspector General determination "that the payment structure that many Lifeline resellers use to compensate sales agents can create substantial incentives for fraud," and directed USAC to "require each sales agent to register with USAC with sufficient information so that USAC can verify the agent's identity and determine the ETC(s) he or she works for."² Aside from the Chairman Pai Letter contemplating that such

¹ See Comments of ITTA – The Voice of America's Broadband Providers, WC Docket Nos. 17-287, 11-42, 09-197, at 5 (Feb. 21, 2018) (ITTA Comments).

² Letter from Ajit V. Pai, Chairman, FCC, to Vickie Robinson, Acting CEO and General Counsel, USAC, at 4 (July 11, 2017) (Chairman Pai Letter).

sales agents, unlike company employees, may work for more than one ETC, the subsequent *2017 Lifeline NPRM* specifically distinguished company “employees” from “agents.”³

At best, it is unclear who is intended to be required to register with the RAD.⁴ USAC’s guidance typically refers to “service provider representatives,” and has lent itself in some places to be construed broadly to encompass company employees and in others to be limited to non-employee sales agents.⁵ We contended that not only should the Chairman Pai Letter be read only to apply to non-employee sales agents, but that experience with Lifeline program sales abuses has shown that the vast majority have involved non-employee sales agents. We also maintained that company employees are distinguishable from non-employee sales agents insofar as problematic enrollments by a company employee already may be traced to the company through National Lifeline Accountability Database (NLAD) and National Verifier accounts, such that there is no question which company may be held accountable.⁶ Further complications may arise from subjecting company employees to RAD registration requirements insofar as union agreements may not allow for company employees’ PII to be subject to disclosure requirements outside of the company, and companies may be subject to liability for any ramifications in the event of a data breach involving personal information their employees were required to furnish in the course of their employment.

In the event company employees ultimately are required to register with the RAD, we advocated that they should not be required to register using PII. In light of the company being readily traceable when enrollments are performed by a company employee, as discussed above, we urged the required registration information for company employees to be limited to employee name, confirmation of employee status, and an indication of the ETC of which the registrant is an employee.⁷ At most, the company employee registrant should additionally be required to

³ *Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10506, para. 91 (2017) (*2017 Lifeline NPRM*).

⁴ See, e.g., *id.* at 10507, para. 92 (seeking comment on how the Commission should define “ETC enrollment representatives” for purposes of required registration with the RAD). Notably, the Commission has not yet released an order addressing this issue or other RAD implementation issues raised in the *2017 Lifeline NPRM*. See *infra* p. 4.

⁵ Compare *Lifeline Program Newsletter*, Representative Accountability Database (RAD) Updates, May 31, 2019, <https://www.usac.org/li/tools/news/default.aspx#2614> (RAD intended to validate the identities of “service provider representatives that handle Lifeline program enrollments, recertifications, and other related transactions”) with *id.* (“Representatives will take their Representative ID to all service providers for which they perform Lifeline transactions,” suggesting the assumption that subject representatives are non-employee sales agents working for multiple service providers).

⁶ Similarly, the company that should be accountable may be readily discerned in the event of problematic enrollments by a company employee via API. See USAC, *RAD: Registration and Linking Accounts, Lifeline Program Update*, at 9 (June 12, 2019), https://www.usac.org/_res/documents/li/training/2019/Lifeline-Program-Webinar-June.pdf (USAC June 12 Webinar PowerPoint) (Phase 3 of RAD implementation will require RAD identification to accompany all transactions, including those submitted by API).

⁷ Registrants with the RAD will be required to certify under penalty of perjury that their registration information is accurate. See *id.* at 16.

furnish a unique business telephone number, business email address, and/or company-issued identification number.⁸ In contrast, the RAD is contemplated to collect a registering employee's birthdate, portion of Social Security number, and residential address.⁹ Even more daunting is the information USAC would require in the event of a purported "identity error" in registration.¹⁰ These concerns are exacerbated by the lack of any indication how USAC will store and safeguard information mailed to it in the event of a registration error,¹¹ and the registrant's required certification that "you agree that all of the information you are providing may be . . . shared . . . by USAC for the purposes of applying for and a receiving a Representative ID,"¹² without any indication of who USAC would share such information with and under what circumstances and protections.

In a time when massive data breaches are a nearly daily occurrence, requiring company employees to provide PII to another repository that could be breached, as were government employee records in the Office of Personnel Management breach, is an undue risk when the employee can provide sufficient non-PII to be tracked via traceability to his or her ETC. As ITTA commented in response to the *2017 Lifeline NPRM*, if "USAC or the Commission audits the submissions by a certain ETC, either the ETC will stand by the submission, or it will disclaim the legitimacy of the submission and thereby forfeit the Lifeline support associated with the submission."¹³ Therefore, with the enrollment traceable to the ETC, nothing more should be required than the ETC's certification that the enrollment was performed by a company employee where that is the case. And if company employees nevertheless are required to register with the RAD, traceability of the enrollments to an ETC's employee, and having the ETC responsible for the enrollments, render any requirement for an ETC's employee to furnish PII in registering with the RAD a risk and burden that far eclipses any traceability benefit that would be derived.

We also expressed concern with procedural irregularities associated with the contemplated implementation of the RAD. It is still not clear to ITTA that the Commission has secured approval under the Paperwork Reduction Act (PRA) for this particular information collection and the use of the information in this particular database.¹⁴ In addition, as noted

⁸ See ITTA Comments at 7 (so long as USAC may hold the ETC accountable, "some other identifier in addition to specification of the ETC [the employee] is representing, such as a unique business telephone number, should be sufficient").

⁹ See USAC June 12 Webinar PowerPoint at 12.

¹⁰ See *id.* at 20-22. For instance, in the event of an "identity not found," the registrant would need to mail USAC copies of documentation such as driver's license, W-2 form, Social Security Card, passport, weapons permit, and/or unemployment/workers' compensation statement of benefits.

¹¹ Of course, where company employees are involved in enrollments, the need for such further submissions should be obviated by holding the ETC accountable for any enrollment irregularities by its employees.

¹² *Id.* at 16.

¹³ ITTA Comments at 6.

¹⁴ Among the things the FCC must specify when seeking Office of Management and Budget approval of an information collection under the PRA are a "Privacy Act Impact Assessment," "Nature and Extent of Confidentiality," and "Needs and Uses" for the information collection.

above, the Commission specifically sought comment on critical RAD implementation issues in the *2017 Lifeline NPRM*, but has not yet resolved these issues via an order. Such issues include how to define an “ETC enrollment representative” required to register with the RAD, what information would be necessary for creation of the RAD, and what privacy and security practices should be used to safeguard this information¹⁵ – in other words, the very issues we addressed and about which we voiced concern in the meeting. Implementing the RAD prior to the Commission resolving these issues would be a classic case of putting the cart before the horse, and would suggest procedural infirmities with respect to the Administrative Procedure Act.¹⁶

To address all of the concerns we identified, implementation of the RAD should not occur until the Commission resolves the RAD implementation issues on which it sought comment in the *2017 Lifeline NPRM*. In addition, either in the order resolving these issues or via direction to USAC, the Commission should exempt company employees from the RAD registration requirement. If company employees are deemed subject to RAD registration requirements, only those employees directly interfacing with the NLAD and/or National Verifier should be required to register, and company employees should not be required to submit any PII as part of the registration process.¹⁷ Fundamentally, USAC should not move forward with implementation of the RAD until the critical privacy and security issues associated with the information envisioned to be required for registration are fully vetted and addressed.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

cc: Trent Harkrader
Ryan Palmer
Jodie Griffin
Nicholas Page
Niki Wasserman

¹⁵ See *2017 Lifeline NPRM*, 32 FCC Rcd at 10507, para. 92.

¹⁶ Although the *2017 Lifeline NPRM* professes to seek comment “on codifying in the Commission’s rules the USAC administrative requirement that ETCs’ customer enrollment representatives” register with the RAD, *id.* at 10506, it would strain credulity to suggest that the RAD implementation issues on which the *2017 Lifeline NPRM* seeks comment are issues merely attendant to *codifying* the RAD registration requirement, and that resolution of them are not prerequisites to USAC’s implementation of the RAD.

¹⁷ If necessary, the Commission may decide via order, or direct USAC, that different information submission requirements may apply to company employees than apply to non-employee sales agents.